Supreme Court, U.S.
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No.00-921

In the Supreme Court of the United States

ILLINOIS BELL TELEPHONE COMPANY,

Petitioner,

v.

WORLDCOM TECHNOLOGIES, INC., ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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TABLE OF CONTENTS

Page

BACKGROUND 1

DISCUSSION 2

CONCLUSION 6

TABLE OF AUTHORITIES

Page

Cases:

Bell Atlantic Maryland, Inc. v. *MCI WorldCom, Inc.*, 240 F.3d 279, 301-09 (4th Cir. 2001), cert. granted, *Verizon* v. *Public Service Comm'n of Maryland*, 121 S. Ct. 2548 (June 25, 2001) (No. 00-1531), and *United States* v. *Public Service Comm'n of Maryland*, 121 S. Ct. 2548 (June 25, 2001) (No. 00-1711) 4

Illinois Bell Tel. Co. v. *WorldCom Technologies, Inc.*, 179 F.3d 566 (7th Cir. 1999), cert. granted, *Mathias* v. *WorldCom Technologies, Inc.*, 121 S. Ct. 1224 (Mar. 5, 2001) (No. 00-878) 1, 4, 5

Mathias v. *WorldCom Technologies, Inc.*, 121 S. Ct. 1224 (Mar. 5, 2001) (No. 00-878) 1

Verizon v. *Public Service Comm'n of Maryland*, 121 S. Ct. 2548 (June 25, 2001) (Nos. 00-1531 & 00-1711) 2

Order in *Verizon* v. *Public Service Comm'n of Maryland*, No. 00-1531, and *United States* v. *Public Service Comm'n of Maryland*, No. 00-1711 (U.S. Dec. 12, 2001) 2

Statutes and Rules:

28 U.S.C. § 1331 ..... 2, 4, 5

47 U.S.C. § 252(e)(6) 1, 3, 5

Supreme Court Rule 13.4 3

Supreme Court Rule 15.8 1

Miscellaneous:

Stern, et al., SUPREME COURT PRACTICE (7th ed. 1993) . . . 1

SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Rule 15.8, petitioner Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") respectfully submits this supplemental memorandum to call to the Court's attention developments in related cases before this Court (Nos. 00-878, 00-1531, and 00-1711) that bear on the proper disposition of this petition (No. 00-921).

BACKGROUND

On November 28, 2000, the Commissioners of the Illinois Commerce Commission filed a petition for a writ of certiorari, No. 00-878, from the Seventh Circuit's decision in *Illinois Bell Tel. Co.* v. *WorldCom Technologies, Inc.*, 179 F.3d 566 (7th Cir. 1999). On the same day, Ameritech filed a cross-petition, No. 00-921, from the same Seventh Circuit decision.

On March 5, 2001, this Court granted certiorari in No. 00-878 on three questions. Question 1 is "[w]hether a state commission's action relating to the enforcement of a previously approved section 252 interconnection agreement is a 'determination under [section 252]' and thus is reviewable in federal court under 47 U.S.C. § 252(e)(6)." *Mathias* v. *WorldCom Technologies, Inc.*, 121 S. Ct. 1224 (Mar. 5, 2001) (No. 00-878) ("*Mathias*").[1]

Ameritech's cross-petition, No. 00-921, remains pending before the Court and appears to have been held for disposition in light of *Mathias*. The question presented in the cross-petition — "[w]hether a claim that a state commission determination concerning the rights and obligations of the parties to a section 252 agreement deviated from the plain terms of that agreement lies within the scope of federal jurisdiction under section 252(e)(6)" — is fairly subsumed within Question 1 on which the Court granted certiorari in *Mathias*. See Stern, et al.,

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[1] The two remaining questions presented in *Mathias* relate to the Eleventh Amendment and the *Ex parte Young* doctrine.

SUPREME COURT PRACTICE 338-339 (7th ed. 1993). Ameritech, AT&T, WorldCom, and petitioners all briefed the issue presented in Ameritech's cross-petition in their briefs in *Mathias*, and that issue received considerable attention at oral argument.

After the Court granted certiorari in *Mathias*, petitions for writs of certiorari were filed in Nos. 00-1531 & 00-1711 that "presented the same questions at issue in *Mathias* v. *WorldCom Technologies, Inc.*, 00-878, plus the additional question of subject matter jurisdiction under 28 U.S.C. § 1331." Order in Nos. 00-1531 & 00-1711 (U.S. Dec. 12, 2001) ("December 12 Order"). On June 25, 2001, this Court granted certiorari on the single "additional question" presented in Nos. 00-1531 and 00-1711: "[w]hether a federal district court has independent subject matter jurisdiction under 28 U.S.C. § 1331 to determine whether a state public utility commission's action interpreting or enforcing an interconnection agreement violates the Telecommunications Act of 1996." *Verizon* v. *Public Service Comm'n of Maryland*, 121 S. Ct. 2548 (June 25, 2001) (No. 00-1531), and *United States* v. *Public Service Comm'n of Maryland*, 121 S. Ct. 2548 (June 25, 2001) (No. 00-1711) (collectively, "*Verizon*").

On December 5, 2001, this Court heard oral argument in *Mathias* and *Verizon*. A week later, this Court issued an Order stating that it "may be unable to reach the merits of the questions presented in *Mathias*." December 12 Order. To ensure that it has jurisdiction "over all of the questions at issue in these cases," this Court granted certiorari on the three remaining questions presented in *Verizon* and requested further briefing on those questions. *Id.*

DISCUSSION

Ameritech respectfully submits this supplemental brief to call to the Court's attention the fact that the statutory jurisdiction issues that will be briefed and decided in the *Verizon* case pursuant to the Court's December 12 Order are

identical to the statutory jurisdiction issues raised in Ameritech's pending cross-petition. Accordingly, for the reasons that follow, Ameritech's cross-petition should — at a minimum — be held pending the Court's decision in *Verizon*, and disposed of as appropriate in light of the decision in that case. Alternatively, the Court could simply grant Ameritech's cross-petition in No. 00-921, which, as noted above, raises the identical statutory jurisdiction issue that already has been fully briefed in *Mathias* and will be briefed again in *Verizon*.[2]

In both *Mathias* and *Verizon*, the disputes between the private carriers that lie at the heart of the statutory jurisdiction issues before the Court involve provisions of section 252 interconnection agreements that govern the carriers' reciprocal compensation obligations. The specific provisions at issue in Ameritech's agreements state that the parties' reciprocal compensation obligations are "As Described in the Act" (J.A. in No. 00-878 at 8a, 14a, 20a, 30a, 38a; C.A. SA48, SA57, SA80, SA89; SA100), which is in turn defined in each agreement to mean "as described in or required by the Act" (J.A. in No. 00-878 at 8a, 13a, 19a, 30a, 37a; C.A. SA39, SA53, SA71, SA85, SA96). The pertinent provisions of the agreement at issue in *Verizon* say precisely the same thing. Pet. App. in No. 00-1531 at 101a; C.A. App. 49, 55 (quoting Interconnection Agreement §§ 1.7, 1.61); see also Brief for Petitioners in No. 00-1531 at 19.

In both cases, the state commission resolved in the first instance the question whether the agreements required the payment of reciprocal compensation on calls to the Internet. See J.A. in No. 00-878 at 114a; Pet. App. in No. 00-921 at 78a-

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[2] Ameritech's petition was timely filed as a cross-petition, not a conditional cross-petition (see Rule 13.4). Accordingly, even if the Court ultimately holds that it lacks jurisdiction over the Commissioners' petition (No. 00-878), the Court may grant Ameritech's cross-petition (No. 00-921), vacate the judgment below, and remand for further proceedings in light of *Verizon*.

79a; Pet. App. in No. 00-1531 at 94a-96a. And in both cases, the party aggrieved by the commission's determination brought an action in federal district court, under 47 U.S.C. § 252(e)(6) and 28 U.S.C. § 1331, contending that the commission's misinter-pretation of the agreements violated federal law by nullifying agreement provisions that expressly limit the parties' reciprocal obligations to the requirements of the 1996 Act. See Ameritech Br. in No. 00-878 at 15; Verizon Br. in No. 00-1531 at 17.

However, both the Seventh Circuit and the Fourth Circuit refused to decide the merits of Ameritech's and Verizon's "misinterpretation" claims, holding that the federal courts lack jurisdiction over such claims. See *Illinois Bell Tel. Co.* v. *WorldCom Technologies, Inc.*, 179 F.3d 566, 574 (7th Cir. 1999); *Bell Atlantic Maryland, Inc.* v. *MCI WorldCom, Inc.*, 240 F.3d 279, 301-09 (4th Cir. 2001). The Fourth Circuit expressly found federal jurisdiction lacking over a challenge to the correctness of a state commission's interpretation of a section 252 interconnection agreement under both section 252(e)(6) and section 1331. See *Bell Atlantic*, 240 F.3d at 305, 307 (section 252(e)(6)); *id.* at 309 (section 1331). Although the Seventh Circuit did not expressly reference section 1331 in the critical passages of its opinion, it plainly rejected Ameritech's contention that the federal courts have federal question jurisdiction under section 1331 over its misinterpretation claim when it held that "[a] decision 'interpreting' an agreement contrary to its terms creates a different kind of problem – one under the law of contracts, and therefore one for which a state forum can supply a remedy." *Illinois Bell*, 179 F.3d at 574.

The Seventh Circuit's failure to specifically address section 1331 in its opinion is immaterial to the proper disposition of Ameritech's cross-petition, because Ameritech fully preserved its argument that section 1331 provides an alternative basis for federal jurisdiction over an "interpretation" claim. See Pet. in No. 00-1711 at 13 (expressing Solicitor General's view that "this Court could consider in *Mathias* whether federal court

jurisdiction to review such state commission determinations exists under 28 U.S.C. § 1331" despite the fact that the Seventh Circuit did not expressly address that question). To begin with, in its federal complaint, Ameritech asserted jurisdiction under both sections 252(e)(6) and 1331. See J.A. in No. 00-878 at 126a-127a. The district court determined that it had jurisdiction under section 252(e)(6) and thus noted that it did not have to consider whether jurisdiction also existed under section 1331. See Pet. App. in No. 00-878 at 29 n.3; Pet. App. in No. 00-921 at 56a-57a n.3. In the court of appeals, Ameritech again preserved its section 1331 argument (Ameritech C.A. Br. at 31-34), but the Seventh Circuit did not address that argument because it concluded that (i) jurisdiction existed under section 252(e)(6) over some of Ameritech's claims (*Illinois Bell*, 179 F.3d at 570-71) and (ii) there was no basis for federal jurisdiction at all over what the Seventh Circuit considered to be Ameritech's state contract law "interpretation" claim (*id.* at 574).

In sum, the issues before this Court arising out of the Seventh Circuit's decision (Nos. 00-878 and 00-921) and the Fourth Circuit's decision (Nos. 00-1531 and 00-1711) involve (i) identical interconnection agreement provisions on reciprocal compensation, (ii) identical state commission determinations on the scope of the parties' reciprocal compensation obligations, (iii) identical claims challenging the state commission interpretations underlying those determinations, and (iv) identical refusals by the courts of appeals to find federal jurisdiction over such claims. Thus, the Court's decision on the statutory jurisdiction issues in *Verizon* will be dispositive of the same issues presented in Ameritech's cross-petition in No. 00-921. Ameritech respectfully submits that, if this Court decides in *Verizon* that the federal courts have jurisdiction to decide a claim that a state commission has misinterpreted the binding terms of a section 252 interconnection agreement — whether under section 252(e)(6) or section 1331 — then the Court should grant the cross-petition, vacate the judgment of the

Seventh Circuit, and remand the case so that Ameritech may obtain a decision on the merits, in federal court, of the claim that the Seventh Circuit refused to decide.

CONCLUSION

For the reasons stated above, Ameritech respectfully submits that its cross-petition, No. 00-921, should be held pending this Court's decision in *Verizon*. Alternatively, the Court may grant the cross-petition and consider together all four of the cases — Nos. 00-878, 00-921, 00-1531, and 00-1711 — in which the identical statutory jurisdiction questions are presented.

Respectfully submitted.

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